

REMARKS

The Office Action dated August 31, 2006 has been reviewed, and the comments of the U.S. Patent Office have been considered. Claims 1-11 and 14-24 are pending in the application. By this Amendment, the Abstract has been amended, and claims 2, 5-6, 8-10, 20, and 22-24 have been amended. The amendments are supported in the specification by at least paragraphs [0031]-[0032] and Figs. 6 and 11.

The Office Action objected to the Abstract because it contains the term "said." By this Amendment, the Abstract has been amended to replace "said" with the term "the." A replacement Abstract is attached. Accordingly, it is respectfully requested that the objection be withdrawn.

The Office Action objected to the drawings because the drawings purportedly do not show the "second end formation" and "second end chamber" features recited in at least claims 7-8. The objection is respectfully traversed. 35 U.S.C. §113 states that the "applicant shall furnish a drawing where necessary for the understanding of the subject matter to be patented" (emphasis added). 37 C.F.R. §1.81(a) likewise requires drawings "where necessary for the understanding of the subject matter sought to be patented." Applicants respectfully submit that an additional drawing showing a tube 52 with a first enlargement 54 and a second enlargement 54 is not necessary for the understanding of the subject matter recited in claims 7-8, or in the other pending claims. The application states that the enlargement 54 illustrated in Figs. 4-8 (and Figs. 9-13) can be at one or both ends of the tube 52, and the figures provide a representative enlargement 54 on a tube 52. *See* paragraph [0031] and Figs. 4-13 of the application. Applicants further submit that a person of ordinary skill evaluating the application and current drawings would understand the subject matter to be patented. Thus, an additional drawing is thus not needed to provide an understanding of this subject matter. It is respectfully requested that the objection be withdrawn.

Claim 23 stands rejected on the ground of non-statutory obviousness-type double patenting over the claims of U.S. Patent No. 6,221,101 and over the claims of U.S. Patent No. 5,861,026. The rejections are respectfully traversed.

The Office Action at page 3 asserts only that claim 23 is not patentably distinct from the claims of the '101 and '026 patents because the features of claim 23 "are set forth in or would

have been immediately obvious from the limitations of the patent claims" of the '101 and '026 patents. Assuming, *arguendo*, that the rejections are based on a comparison of the scope of claim 23 to the scope of the claims in the '101 and '026 patents, Applicants respectfully traverse the rejections because the scope of the claims, by itself, cannot support a double patenting rejection. *See* MPEP §804(II). Applicants also traverse the rejection because the Office Action fails to establish a *prima facie* case of obviousness.

As noted in the MPEP, "domination" and "double patenting" are two separate issues. *See id.* Domination refers to when one patent has a "broad" or "generic" claim, which reads on an invention defined by a narrower or more specific claim in another patent, such that the former patent dominates the latter. *See id.* And as further noted in the MPEP, domination (*i.e.*, broad claims in the absence of statutory or non-statutory grounds) by itself cannot support a double patenting rejection. *See id.* Therefore, the burden remains on the Office to establish a *prima facie* case of obviousness as to why one of ordinary skill in the art would conclude that the invention recited in claim 23 is an obvious variant of the inventions recited in the claims of the '101 and '026 patents. That is, there must be a suggestion or teaching in the prior art that would motivate one of ordinary skill in the art to modify the invention recited in the claims of the '101 and '026 patents in order to reach the invention recited in claim 23.

Applicants respectfully submit that there is no suggestion or motivation provided by the Office to modify the claims of the '101 and '026 patents such that instant claim 23 is an obvious variant of the claims of the '101 and '026 patents, and the Office thus fails to establish a *prima facie* case of obviousness. Accordingly, the double patenting rejections should be withdrawn.

Furthermore, claim 23 of the above-identified application is patentably distinct from the claims of the '101 and '026 patents. Claim 23 recites "an oval open distal end with a major diameter larger than a diameter of the tubular part" whereas the claims of the '101 and '026 patents do not recite such language. Accordingly, for the forgoing reasons, it is respectfully requested that the double patenting rejections be withdrawn.

Claims 2, 4-6, and 8-11 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite. By this amendment, claims 2, 4-6, and 8-11 have been amended to address the helpful comments provided in the Office Action. Applicants have also made additional amendments to the claims to more particularly point out and distinctly claim Applicants' invention. It is respectfully requested that the rejection be withdrawn.

Claims 1-11, 14, 16, 18, 19, and 21 stand rejected under 35 U.S.C. §102(b) over Rayhanabad (U.S. Pat. No. 4,712,551); claims 15, 17, 20, and 22 stand rejected under 35 U.S.C. §103(a) over Rayhanabad; and claims 23 and 24 stand rejected under 35 U.S.C. §102(b) over Papazoglou (WO 95/34255). The rejections are respectfully traversed.

With regard to independent claims 1, 18, and 21, Rayhanabad fails to show or describe a vascular prosthesis with a non-circular open end perimeter outlining a cross-sectional area larger than a cross-sectional area of the tubular portion at the first diameter or first diameter portion. The Office Action at page 4 asserts that Rayhanabad's inlet end 12 corresponds to the recited "tubular portion" and that mouth 22 corresponds to the recited "non-circular open end perimeter." Rayhanabad expressly states that "the cross-sectional area of the inlet end 12 increases from the mouth 22 ... towards the distal end 16." See Rayhanabad at col. 5, lines 33-36. Rayhanabad provides that mouth 22 has the smallest cross-sectional area of the inlet end 12 and, therefore, mouth 22 fails to have a cross-sectional area that is larger than the remainder of inlet end 12. Rayhanabad also provides specific diameters for the mouth 22 and the distal-most end of the inlet end 12 that shows the mouth 22 has a smaller cross-sectional area than the cross-sectional area of the inlet end 12. See Rayhanabad at col. 5, lines 29-32 and 36-40.

With regard to independent claim 23, Papazoglou fails to show or describe a vascular prosthesis with an oval open distal end with a major diameter larger than a diameter of the tubular part. Papazoglou does not show or describe a blood vessel grafts with an oval end. See Papazoglou at Figs. 2 and 4.

For the foregoing reasons, the applied references fail to show or describe all of the features recited in the independent claims or the dependent claims thereof. It is respectfully requested that the rejections be withdrawn.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration of this Application and the prompt allowance of at least claims 1-11 and 14-24.

Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact the undersigned to expedite prosecution of the application.

The Commissioner is hereby authorized by this paper to charge any fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-3840. **This paragraph is intended to be a CONSTRUCTIVE PETITION FOR EXTENSION OF TIME in accordance with 37 C.F.R. § 1.136(a)(3).**

Respectfully submitted,



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